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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 WAYNE A. MURPHY,

9 Plaintiff,

10 v.

11 PIERCE COUNTY JAIL, et al.,

12 Defendants.

CASE NO. C11-5448BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 16) and
15 Plaintiff Wayne A. Murphy’s (“Murphy”) objections to the R&R (Dkt. 18), which also
16 contained a motion to appoint counsel. The Court has considered the R&R, Murphy’s
17 objections and motion, and the remaining record, and hereby adopts the R&R and denies
18 the motion to appoint counsel for the reasons stated herein.

19 **I. FACTUAL AND PROCEDURAL BACKGROUND**

20 On June 9, 2011, Murphy filed his civil rights complaint alleging violations by
21 Defendants of 42 U.S.C. § 1983. Dkt. 7. On October 19, 2011, Judge Strombom issued
22 the R&R recommending that Murphy’s complaint be dismissed without prejudice as

1 frivolous and that the dismissal count as a strike under 28 U.S.C. § 1915(g). Dkt. 16 at 5.
2 On November 7, 2011, Murphy filed a response to the R&R. Dkt. 18. In his response,
3 Murphy does not object to the R&R, but seeks appointment of counsel, an order requiring
4 Defendants to produce documents, and an extension of time to review the documents. *Id.*

5 **II. DISCUSSION**

6 **A. Motion to Appoint Counsel**

7 There is no right to have counsel appointed in cases brought under 42 U.S.C.
8 § 1983. Although a court, under 28 U.S.C. § 1915(e), can request counsel to represent a
9 party proceeding in forma pauperis, the court may do so only in exceptional
10 circumstances. *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). A finding of
11 exceptional circumstances requires an evaluation of both the likelihood of success on the
12 merits and the ability of the plaintiff to articulate his claims pro se in light of the
13 complexity of the legal issues involved. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331
14 (9th Cir. 1986).

15 Here, Murphy fails to demonstrate exceptional circumstances that warrant
16 appointment of counsel, and has demonstrated an adequate ability to articulate his claims
17 pro se. In addition, Murphy has not demonstrated a likelihood of success on the merits.
18 Accordingly, his motion to appoint counsel is denied.

19 **B. Response to the R&R**

20 After allowing Murphy multiple amendments to his complaint, Judge Strombom
21 found that Murphy had failed to allege a policy or practice by Defendants that would
22 entitle him to bring claims against them under § 1983. Dkt. 16. In his response to the

1 R&R, Murphy has failed to allege what documents he is seeking, why he is entitled to
2 further documents, or how the documentation he requests would remedy his complaint.
3 Dkt. 18. Further, he has failed to make any specific objections to Judge Strombom's
4 findings. *Id.* In seeking an order for production of documents and an extension of time
5 to review such documents, Murphy has failed to make an effective objection to the R&R.
6 Accordingly, the Court will adopt the R&R.

7 **III. ORDER**

8 The Court having considered the R&R, Murphy's response, and the remaining
9 record, does hereby find and order as follows:

- 10 (1) Murphy's motion to appoint counsel is **DENIED**;
11 (2) The R&R is **ADOPTED**; and
12 (3) This action is **DISMISSED without prejudice** and the dismissal will count
13 as a **strike** under 28 U.S.C. § 1915(g).

14 Dated this 28th day of December, 2011.

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17 BENJAMIN H. SETTLE
18 United States District Judge
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